Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION FOR SECTIONS I THROUGH XIV AND REPLY COMMENTS FOR SECTION XV

Dated: April 18, 2011

EXECUTIVE SUMMARY

The Commission's Notice of Proposed Rulemaking (NPRM) provides a comprehensive examination of universal service and intercarrier compensation reform proposals which will modernize the federal universal service fund and intercarrier compensation policies (USF/ICC) by transitioning the current high-cost mechanism and intercarrier compensation regime into a broadband-focused environment. Overall, the NPSC supports the Commission's vision. The Commission should accelerate broadband availability by providing high-cost support for broadband capable networks. The Commission should reform the intercarrier compensation mechanism so that it is technologically neutral and fairly compensates all providers for the use of their networks.

Reform should occur gradually, however, giving current high-cost recipients a reasonable transition period to absorb the proposed changes or make alternative business plans. The Commission's high-cost support mechanism should also be crafted to more accurately reflect carriers' costs to operate broadband-capable networks in rural, sparsely populated areas. We continue to have reservations about using a competitive bidding process for any ongoing support and, recommend instead that the Commission utilize a cost model to determine recurring high-cost support. However, competitive bidding may be effective in distributing one-time capital support to needed areas.

Consistent with prior comments, the NPSC agrees with the Commission's proposed recommendation to support one network in a given area with high-cost support.

The Commission should target USF support so that it is directed to the areas where it is most needed and used most effectively. We also agree that there should be improved accountability from carriers receiving support to ensure that USF support is used for its intended purpose.

The NPSC agrees with a number of commenters that the Commission should resolve the open issues regarding Voice over the Internet Protocol (VoIP) traffic by adopting a rule requiring VoIP providers to fairly and equitably contribute for access to the network. Phantom traffic and access stimulation rules must also be expeditiously adopted, prior to making any decisions regarding long-term intercarrier compensation reform. The Commission's long-term intercarrier compensation mechanism must preserve state authority to establish and modify intrastate access rates. As opposed to preempting state authority, the Commission should provide incentives so that intrastate rates can be transitioned to the cost of providing the service.

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I. INTRODUCTION

On February 9, 2011, the Federal Communications Commission (Commission) released a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in the above captioned proceedings.[1] The Nebraska Public Service Commission (NPSC) appreciates the opportunity to file these comments.

The Commission faces the monumental task of modernizing the universal service fund (USF) and intercarrier compensation (ICC) rules. As the Commission's National Broadband Plan[2] recognized, broadband access everywhere is critical for our nation's economic development, innovation, and consumer welfare. Unfortunately, many Americans still do not have access to broadband services either because they live in rural, remote areas of the country or because broadband is cost prohibitive.

The Commission's rules and policies must be modernized to reflect the way people rely on broadband services to communicate with one another. We appreciate the manner in which the NPRM comprehensively brings the goals of the National Broadband Plan together with USF and ICC reform.

[1] *In the Matter of the Connect America Fund,* WC Docket No. 10-90, *A National Broadband Plan for Our Future,* GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers,* WC Docket No. 07-135, *High-Cost Universal Service Support,* WC Docket No. 05-337, *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, *Federal-State Joint Board on Universal Service* CC Docket No. 96-45, *Lifeline and Link-Up,* WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (February 9, 2011) ("NPRM"); and *Federal Register*, Vol. 76, No. 41, March 2, 2011, at 11632.

[2] *See Connecting America: The National Broadband Plan* (March 16, 2010) ("Broadband Plan").

II. DISCUSSION

Role of Intercarrier Compensation and Universal Service Programs

The Commission correctly states that intercarrier compensation and universal service reform should occur simultaneously.[3] We agree that these policies should work in tandem to enable carriers to deliver affordable service to consumers. We also agree that the intercarrier compensation regime is in need of comprehensive reform. As discussed below, the priority of the Commission should be to eliminate 1) arbitrage opportunities which stem from disparate regulatory treatment of providers 2) practices which allow carriers to mask the true nature of the traffic, and 3) discriminatory agreements.

Recognizing that states have taken various approaches to intrastate access rates, and that some states have extremely high intrastate access rates, the Commission invites comments on proposals to establish comprehensive intercarrier compensation reform.[4] We strongly agree that states which have not undertaken access reform must be prompted to do so; however, we have concerns about a federal one-size-fits-all approach. Accordingly, we recommend the Commission preserve the states' flexibility to determine reasonable intrastate access rate reform.

Legal Authority to Support Broadband

Explicit Determination

The Commission possesses the requisite legal authority to provide explicit universal service support for broadband in addition to voice service.[5] Section 254(b) of the

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[3] NPRM, at para. 45.

[4] *See* id., at para. 54.

[5] *See* id., at para. 55.

Telecommunications Act of 1996[6] reflects congressional intent to delegate to the FCC the authority to determine which services to support. Universal service is defined as an "evolving level of telecommunications services . . . taking into account advances in telecommunications and information technologies and services."[7] The Commission recognized on several occasions that a number of wireline carriers are using existing high-cost support to extend modern networks capable of delivering both voice telephony and high-speed Internet access.[8] Similarly, wireless carriers receiving high-cost CETC support are using that support to build-out infrastructure capable of providing mobile broadband services in addition to voice service. Voice and data services are provided in large part on the same infrastructure, thus explicitly supporting these networks to improve the infrastructure used to provide both voice and data service would be consistent with the Commission's statutory mandate to advance universal service.

The Commission's National Broadband Plan correctly proposes universal service policy should be modernized to include broadband service as a supported service. Consistent with the Joint Board's recommendation, the Commission should declare "that universal service support should be directed where possible to networks that provide advanced services, as well as voice services" and adopt such a principle pursuant to section 254(b)(7).[9] The Joint Board principle strikes a reasonable balance between the goal of preserving and advancing universal service and the goal of increasing advanced telecommunications and information services.

Designation Process

The Commission should adopt a process similar to that provided in section 214(e) for determining eligibility. As provided in section 214(e) state commissions should continue

[6] 47 U.S.C. § 254(b).

[7] 47 U.S.C. § 254(c)(1).

[8] *See* NPRM, at para 121.

[9] NPRM, at para 58.

to assume the primary role of designating eligible telecommunications carriers (ETCs); with the Commission designating carriers as ETCs only where states have abdicated jurisdiction to make that determination. The NPSC does not believe the Commission possesses the authority to designate nationwide ETCs, or even regional ETCs where states have assumed the primary role in designating ETCs.[10] Section 214(e) expressly reserves that authority to the states. Additionally, the Commission should not permit a provider to become an ETC for only broadband services.[11] Such a designation would be contradictory to the plain language of the Act which requires ETCs to provide all supported services within a designated territory.[12] As required by the Act, a supported broadband provider must continue to provide affordable and reasonably comparable voice-grade services to consumers.[13]

The NPSC recommends the Commission make the following determinations:

1. Find it possesses the authority to add broadband service to the list of supported services;
2. Adopt a rule which requires current ETCs to make a demonstration that they can provide broadband to consumers in designated service areas within a reasonable time;
3. Require state commissions to consider the enacted minimum broadband service requirements when determining whether to designate additional ETCs going forward; and
4. Adopt separate rules or criteria for a lifeline/link-up designation, or provide a waiver option pertaining to broadband service which can be granted by state commissions on a case-by-case basis.

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[10] *See* NPRM, at para. 429.

[11] *See* id.

[12] *See* 47 U.S.C. § 214(e); *see also* 47 U.S.C. § 254(c).

[13] *See* id.

Conditional Broadband Support

As an alternative to explicitly declaring broadband as supported service, the Commission seeks comment on whether to condition universal service support upon recipients' broadband commitments.[14] We agree that this is a reasonable alternative which would encourage current providers to deploy broadband service. We also agree that clearly, the Commission has the authority to make this finding. However, under this alternative approach, broadband deployment may not occur as rapidly in comparison to the Commission's proposal to directly target support to specific unserved and underserved areas.

The Commission seeks comment on whether it should use the forbearance process to authorize support for broadband deployment. [15] We would recommend the Commission not use this process to determine national universal service policy. The Commission's universal service policies must have certainty and predictability in order to provide an incentive to carriers to make business plans and invest in their infrastructure. In addition, the malleable nature of the forbearance process would not give the states the certainty needed to make policy decisions which would complement federal goals. We are also concerned that the forbearance process may result in discriminatory rather than uniform policy. Accordingly, we do not believe the forbearance process is the right approach to advance universal service objectives.

We support the four goals described by the Commission to (1) preserve and advance voice service (2) to ensure the deployment of modern networks, (3) to ensure that rates for broadband and voice service are reasonably comparable in all regions of the nation, and (4) to limit the contribution burdens on households.[16] It is important to strike

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[14] Id., at para. 70.

[15] *See* NPRM, at para. 72.

[16] NPRM, at para. 80.

the appropriate balance between ensuring universal service is provided through modern networks capable of providing broadband to Americans while reducing the financial burden on households. In addition to the goals listed, we recommend the Commission also ensure that all providers are contributing to universal service on an equitable basis. This particular proceeding does not focus on expanding the contribution base; however, we think it is important that the Commission consider it in order to balance the objectives of universal service in a broadband supported environment.

Leveraging Support through Cooperation with States

The Commission appropriately recognizes that universal service should be a federal and state obligation. The Commission should develop a collaborative process with states to achieve these important federal and state objectives. We previously recommended that the Commission clearly define state commissions' abilities to continue to protect their consumers and explicitly preserve that responsibility. The Commission's present NPRM seeks comments on the states' roles and responsibilities, and we appreciate this discussion.

As the Commission observed, many states have state universal service funds to support voice service.[17] These funds also indirectly support important infrastructure improvements which, in turn, support broadband availability. Some states, like California and New York, have explicit broadband grant programs.[18] Other states, like Nebraska, have been considering adding a broadband component to their state universal service programs.

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[17] Id., at para. 87.

[18] Id. The NPSC currently has a small explicitly funded grant program called the Nebraska Internet Enhancement Fund (NIEF). *See Neb. Rev. Stat.* section 86-579. Communities may apply for financial assistance to install and deliver broadband or other advanced telecommunications infrastructure and service. The state legislature appropriated seed money to the NPSC to begin the program in 2001. In addition, the NPSC may receive gifts, contributions, property and equipment from public and private sources. Funds from other programs such as the Nebraska Competitive Telephone Marketplace Fund and dark fiber lease agreements are also transferred into the NIEF for distribution.

Last year, the NPSC opened a proceeding to determine whether it should add broadband service to the list of supported services for the purpose of receiving state universal service support or whether to initiate a separate broadband pilot program within its universal service fund to promote broadband deployment in unserved areas.[19] Many commenters supported the idea of a broadband pilot program. Some commenters suggested that the NPSC wait until the Commission acted on USF and ICC reform before moving forward with a state broadband initiative. Other commenters argued the NPSC didn't have the legal authority to explicitly support broadband.[20] Based on the comments provided, the NPSC found that it possessed the requisite authority to support broadband capable networks, and sought further comment on determining eligibility, setting appropriate standards, and implementing an application process.[21]

We strongly agree that the Commission should take into consideration states' actions to directly or indirectly support telecommunications and advanced services infrastructure. The Commission's policies must encourage states to share responsibility in preserving and advancing universal service. In prior comments, the NPSC advocated that the Commission adopt an approach which would create a tiered support mechanism which would recognize states which have created explicit funding mechanisms, reformed access rates, and/or re-balanced local rates. The NPSC recommends an explicit offset or reduction of high-cost support for those states that have not taken any action to reform access rates, rebalance local rates, or explicitly supplement federal support through state universal service fund programs. However, the NPSC also supports the use of incentives

[19] Application No. NUSF-77, *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the NUSF* (March 10, 2010) (NUSF-77).

[20] *See, e.g.,* NUSF-77, Initial Brief of Sprint Nextel (July 23, 2010) at 2. Sprint Nextel argued the NPSC "lacks authority under Nebraska law to divert all or any portion of NUSF distributions to ILECs for the purpose of broadband deployment because broadband is unquestionably an information service." *See, contra,* NUSF-77, Rural Independent Companies' Brief (July 23, 2010) at 3, which provided "[t]he terms of the NUSF Act and principles of statutory construction support a conclusion that the Commission possesses requisite legal authority to provide NUSF support for capital and operational expenditures to deploy broadband in Nebraska."

[21] *See* NUSF-77, Progression Order No. 1, (November 3, 2010).

proposed in the NPRM which would give preference or priority to states that have created explicit support mechanisms.[22]

Developing that federal-state partnership is significant for a number of reasons not the least of which is that state universal service programs can help reduce the burden on the federal fund. State commissions also typically have a closer relationship with the consumers, and understand the geographic and economic barriers facing their particular jurisdictions. In addition, a number of states have been collecting broadband inventories through the State Broadband Data and Development grant program. The NPSC, for example, received a grant for broadband data development and planning. We have been actively working with broadband providers and consumers gathering data and hosting regional meetings to discuss broadband deployment and utilization challenges.

States must be given a role to assist the Commission with national universal service reform policy. For the states which haven't developed universal service policies or programs because of statutory limitations or political reasons, the incentive to move in that direction must be tied to specific Commission goals and must be financially significant.

In addition, the Commission seeks comments on whether it should take into account whether states have restricted municipalities from funding or deploying broadband networks.[23] We strongly disagree with this proposal. We recognize that some municipalities have taken an active role in supporting the deployment of broadband. Some have accomplished broadband deployment through partnerships with private entities while others have been able to leverage excess capacity to provide broadband services to consumers in competition with private entities. In Nebraska, state law does impose restrictions on public entry into the telecommunications market. However, municipalities are able to partner with telecommunications companies to provide service

[22] *See* NPRM, at para. 298.

[23] *See* id., at para. 299.

through fiber lease agreements. Those lease agreements are filed with the NPSC for a determination of market rate.

More significantly, in the universal service context, there is no correlation between municipal entry and high-cost universal support needs. Universal service challenges for both voice and data availability are more clearly more prevalent in the out-of-town areas where the costs to provide the services are significantly higher. High-cost support should be targeted to those areas, namely, the out-of-town areas, where the cost of providing service, without universal service support, would not be affordable for consumers. For the in-town areas in Nebraska, competitive options for consumers are available without high-cost universal service support. Accordingly, the Commission's universal service rules should not take state municipal entry restrictions into account in the determination of federal high-cost universal service support.

Path to Reform

The Commission proposes that certain public interest obligations should continue in a broadband supported environment. We agree. It is necessary and appropriate for public interest obligations to continue in order to protect consumers. Consumers have the expectation that there are certain protections and remedies in place to safeguard them. That expectation is not going to change simply because broadband applications and services are available. In exchange for the benefits of high-cost universal service support, carriers must be obligated to provide high quality services.[24] State commissions should continue to safeguard consumers and enforce these obligations.

We agree that with respect to the provisioning of voice service that USF recipients must continue to be subject to any existing state or federal ETC requirements. Consistent with prior comments, the NPSC believes the Commission is required to continue to preserve and advance universal voice service to consumers.[25] The obligation to offer voice service must not disappear with the reformed and modernized universal service

[24] *See* 47 U.S.C. §§§ 214(e) and 254(b).

[25] *See* 47 U.S.C. § 254(c).

mechanism. Recipients should be required to continue to offer a standalone voice telephony service throughout their designated service area. If the Commission decides that recipients may partner with another voice provider to maintain eligibility, the Commission should also require that both the recipient and the partner be jointly responsible for meeting the public interest obligations as a condition of support.

Consumer protections and remedies are equally important in a broadband-centric environment. The Commission should require all supported providers, as ETCs or designated Providers of Last Resort (POLRs), to continue to be subject to the various public interest obligations established by the Commission and states. Providers must at a minimum:

1. Have the obligation to serve everyone in their designated territory within a reasonable period of time;
2. Give adequate notice to the Commission, states and consumers before leaving the market;
3. Offer core services, including voice service, at affordable rates;
4. Have a duty to serve all consumers indiscriminately and openly disclose information to consumers about rates, terms and conditions of service; and
5. Must be accountable to consumers for billing and service errors and for network quality and maintenance.

The Commission sought comment on specific build-out milestones and coverage requirements. Currently, in accordance with federal rules and many state requirements, ETCs must file a five-year build-out plan.[26] Recipients of Recovery Act funding were given a three-year deadline for completion of projects.[27] The NPSC believes a three-year

[26] NPRM, at para. 135 n. 215; *see also* Neb. Admin. Code Title 291, Chapt. 5, Section 009. Nebraska's ETC designation requirements mirror those adopted by the Commission in the *ETC Designation Report and Order*, 20 FCC Rcd at 6380-85, paras. 21-24.

[27] NPRM, at para. 135 n. 215 *citing* 74 Fed. Reg. 33104, 33110 (2009).

build-out requirement would be reasonable. Providers should be required to file a broadband build-out proposal which would describe how the funded projects would be completed in this timeframe. Additionally, providers should be required to file annual reports indicating the progress towards completion and detail any adjustments in the original time frame described in their application.

Characteristics of Broadband Service

We support the Commission's proposal to adopt metrics for broadband using specific performance characteristics.[28] The Commission should define broadband in terms of objective and measurable performance indicators. Those performance indicators must be based on the statutory requirement to achieve reasonably comparable services in the rural areas as those provided in the urban areas.[29] In sparsely populated areas, it is just as important for consumers to have access to bandwidth capable of high speed applications, particularly for businesses and consumers relying on broadband for health care, education, and e-commerce. By making broadband a supported service, the Commission must make support sufficient to ensure that rural services and rates are reasonably comparable to those offered in urban areas.

In the near-term, the Commission proposes to direct Phase I Connect America Fund (CAF) support to areas lacking service that provides a download speed of 768 kbps or better.[30] The NPSC recommends the Commission make Phase I support available to bidders proposing to serve areas not yet receiving 3 Mbps (actual) downstream and 768 (actual) kbps upstream. A successful bidder should be required to provide at least 4 Mbps/1Mbps as minimum broadband speeds.[31]

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[28] NPRM, at para. 103

[29] 47 U.S.C. § 254.(b).

[30] *See* NPRM, at para. 286.

[31] *See* NPRM, at para. 311.

The Commission, in consultation with the Federal/State Joint Board on Universal Service, should re-evaluate requirements for broadband capability prior to the implementation of the long-term proposal and then every four years thereafter. The specific performance characteristics should be subject to continuing review and consideration based on consumer demand and market trends. The Commission's policies should be technology and competitively neutral but should give consideration to existing broadband infrastructure. The Commission's public interest obligations should also be re-evaluated from time to time to ensure that consumers are protected from harmful practices.

State commissions should be used to measure and enforce compliance with federally and state defined public interest obligations. We recommend that states use a certification process similar to the method used currently for ETCs. The NPSC, for example, requires federal and state designated ETCs to annually file, a one-year historical and one-year prospective description of how federal and state universal service support was and will be used. We believe this process appropriately balances public accountability with administrative costs. We recommend the Commission require more than a simple self-certification from providers as evidence that they are using high-cost support for the intended purpose.

Near Term Reforms

The Commission proposes to slowly transition the existing high-cost fund into the CAF. During the transition period, the Commission seeks comment on a number of "near-term" reforms which would set carriers on a path to incentive-based regulation. We agree that the Commission should modernize the five funding mechanisms to drive the appropriate incentives associated with universal service, reduce inefficiencies, and create more accountability. We also agree that the Commission should provide a sufficient transition period so that carriers can adapt to the long-term vision for the program. We agree with the following Commission proposals:[32]

- Eliminate the Identical Support Rule
- Support one wireline/wireless provider in a given geographic area
- Target Support on a more specific/granular basis
- Limit reimbursable operating and capital costs

The Commission should adopt its proposal to phase-out the identical provision of support to CETCs. High-cost universal service support should not be used to create or maintain artificial competition. Rather, high-cost support should be used in a targeted and efficient manner to bring affordable and universal core services to consumers. Consistent with prior comments we continue to believe that the Commission should establish both a wireline high-cost fund and a separate mobility fund. However, if the Commission decides to redistribute all funds through the CAF in the long-term, the Identical Support Rule must be phased-out.

We agree with a five-year transition period to slowly reduce carriers' dependence on CETC universal service support.[33] We support the Commission's proposal to reduce the CETC cap by twenty percent (20%) each year over a five year period with a provision that a waiver may be filed by a carrier for additional CETC support.[34] Any provider seeking a waiver should with particularity describe the circumstances where the availability and affordability of the service would be jeopardized, and quantify the need for additional support through a cost model or similar specific cost-based analysis. Any waiver or exception granted in the transition process should be phased-out when the CAF is implemented.

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[32] *See* NPRM, at para. 158.

[33] *See* id., at para. 248.

[34] Id.

The Commission anticipates phasing-in the CAF support first with nonrecurring support from reclaimed CETC support and IAS support. The Commission proposes an initial auction in 2012.[35] Given the Commission's goal to efficiently and expeditiously target broadband support to unserved areas, the Commission proposes that only one provider per area would receive CAF support during the initial phase.[36] We agree with the Commission's proposal. High-cost support should be rationally based on the carriers' costs of providing the supported services. High-cost support should not be used to create artificial competition in areas where there is no business case to support competitive networks.

Similarly, in 2004, when the NPSC adopted its long-term high-cost program, the NPSC found it was appropriate to limit high-cost support to one facilities-based network in a given area with the high-cost funds distributed through the NUSF. After considerable public comment and review, the NPSC issued an order finding:

> The Commission does not believe it to be in the public interest for the Fund's Program to support multiple networks within a given support area, due to the cost involved and the related impact on customers within the state.[37]

Any carrier, regardless of technology, is eligible to petition the NPSC to become the NETC in a designated area and receive high-cost support; however, the carrier would be required to assume certain obligations in return which include the ability and commitment to: 1) provide all supported services to every household within a service area with its own facilities at the point in time designation is granted; 2) comply with any and all interconnection requirements set forth by § 251 (c) of the Telecommunications Act of 1996 and comply with any and all interconnection agreements in existence with

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[35] *See* id., at para 160.

[36] *See* id, at para. 264.

[37] *In the Matter of the Nebraska Public Service Commission, on its own motion, Seeking to Establish a Long-Term Funding Mechanism,* NUSF-26, Progression Order No. 5 (June 29, 2004) at para. 12.

the ILEC at the point of time the designation is granted; and 3) comply with the NPSC's reporting requirements.

The Commission should adopt competitively neutral requirements as a condition precedent to eligibility which will ensure that the provider is committed to serving all consumers living in the designated territory within a reasonable timeframe. The Commission's requirements should not favor one type of technology over another. In addition, the Commission's requirements should not preclude the development of competition in areas where an economic case can be made for it.

We also agree that in the short term, nonrecurring support should be used to accelerate the deployment of broadband in unserved territories. While we do have concerns regarding the use of auctions and competitive bidding processes for long-term recurring universal service support, we agree that obtaining access to funds for initial build-out costs could be achieved through a targeted bidding process. Providers receiving support should be required to implement infrastructure sharing provisions; adopt certain public safety requirements; and meet affordability, speed, and service benchmarks. The Commission should also establish annual build-out accountability measurements for all CAF recipients.

Targeting of Support

We agree with the Commission's proposal to more efficiently determine USF support needs and target support those areas.[38] In the near term, the Commission proposes to identify unserved areas on a census block basis. As a recipient of grant funding for broadband planning and mapping, the NPSC has seen both the advantages and disadvantages of using census block information to identify unserved areas. We agree that defining areas based on census blocks would provide a more granular picture of broadband availability than zip codes. The NPSC uses census blocks through its own determination of high-cost support. Census block information is publicly available and

[38] *See* NPRM, at para. 269.

therefore publicly verifiable and will allow the Commission to target universal service support on a more granular level.

However, there are certain issues associated with using census blocks as well. Providers' service boundaries don't follow census block attributes. In rural states where census blocks can make up a larger geographic territory, the availability of broadband can be significantly underrepresented. Many rural wireline providers can and would provide broadband services throughout their exchange boundaries upon a subscriber's request, but may not currently show the availability in those terms simply because there was no subscriber or need. Further, as the Commission recognized, the data collected and provided to the NTIA for the National Broadband Map will not be completely accurate because broadband providers are not required to report their coverage. Rather, the broadband inventory relies on the voluntary participation of the broadband providers, and even then, providers supply data along a varying scale of granularity. As an alternative or additional source of information, we recommend the Commission require broadband providers or states having such inventories to supply broadband footprints or maps which can be used with census block data.

We further suggest that the Commission should rely on state commissions to identify unserved areas within their borders and give priority to those areas. State commissions routinely receive contacts from consumers regarding unserved areas. The NPSC, for example, has a familiarity with the services provided by wireline and wireless carriers in Nebraska. We maintain a registry of all communications providers offering service in the state. We receive applications from consumers requesting to amend telecommunications companies' exchange boundaries so that the consumer can receive service from adjacent local exchange carriers that are willing to extend broadband service to their areas. We routinely receive consumer contacts regarding the availability of broadband.

In addition, the NPSC, along with its planning team partners,[39] is currently conducting local and regional broadband planning forums throughout the state as part of its NTIA grant-related activities. Our collaborative team is working with consumers, businesses, and local and tribal leaders throughout the state to increase broadband penetration and adoption in Nebraska.

Long Term Reform and the Connect America Fund

The Commission sought comment on how it should ultimately size the fund and create a long-term support for broadband providers.[40] In order to appropriately size the fund, the Commission needs to determine whether it will expand the contribution mechanism so that all providers contribute in an equitable manner, determine the costs of maintaining universal service preferable through the use of a cost model, and complete its determination of jurisdictional separations.

Contribution Base

A universal service mechanism which explicitly supports broadband can only be maintained with a wide USF assessment base which does not contain a loophole favoring one particular class of provider. Technology-specific loopholes increase the assessment base borne by consumers of the providers that remain subject to the assessment, skew the competitive playing field, and erode the funding source for universal service by driving consumers to the favored providers. Accordingly, the Commission should expand the base of contributors to include all broadband providers in a technologically neutral manner.

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[39] The Nebraska Broadband Planning Team consists of the NPSC, the University of Nebraska-Lincoln, the Nebraska Department of Economic Development, the Nebraska Technology Information Commission, and the AIM Institute.

[40] NPRM, at paras. 412-416.

Use of Cost Models to Determine Support

The NPSC has previously been on record supporting the use of a cost model for determining high-cost support for the long-term. The Commission should use a brown-field approach to determine carrier support going forward and should strongly consider updating the cost model work and examining carrier cost data that it has on file. The Commission's model should be focused on determining relative costs associated with upgrade existing networks for the desired level of broadband in out-of-town or sparsely populated areas where high-cost support should be targeted. Whether wireline or wireless high-cost support is being considered, the NPSC believes the best approach used to determine high-cost support needs is through the use of a cost model.

The NPSC supports the use of a regression analysis to develop formulas that estimate operating costs and investment requirements associated with serving specific geographic areas.[41] The NPSC has successfully used a regression analysis in its high-cost formula since 2005.[42] The NPSC utilizes publicly available census household data, by census block and then aggregates the state into multiple urban and rural support areas based on cost characteristics. The NPSC's high-cost model develops forward-looking loop costs in each support area. The NPSC uses forward-looking loop costs developed through the Benchmark Cost Proxy Model (BCPM) and a common set of inputs for all companies. Regression techniques are used to link the forward-looking costs to household density in the defined areas. Densities are determined in the proposed support areas. With the use of the regression results, expected loop cost, as a function of measured density is calculated for each support area.

The NPSC's high-cost model compares expected loop cost for each support area to a loop cost benchmark. A benchmark of $17.50 for residential line service that had

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[41] *See* NPRM, at para .441.

[42] *See, e.g., In the Matter of the Nebraska Public Service Commission, on its own motion, Seeking to Establish a Long-Term Funding Mechanism,* NUSF-26, Progression Order No. 5, Appendix A (June 29, 2004).

been established previously was used as the benchmark base.[43] When the loop cost in a particular support area is above the benchmark, the difference between the two is multiplied by the number of households in the support area to obtain the base support amount for that support area. Support area results are aggregated to get the statewide base amount. Finally, each carrier's allocation of program support is calculated based on relative base support amounts.

Adoption of a cost model which calculates expected cost and compares those costs against a reasonable benchmark would be the best methodology for determining support levels and achieving the Commission's statutory requirements. In particular, we believe it would produce more predictable, sufficient, and sustainable results for consumers and providers attempting to extend broadband capable networks to the high-cost areas through a workable business model.

All providers, consistent with current ETC requirements, should be committed to extending broadband service out to every customer requesting service within a reasonable period of time. If the provider cannot or is unwilling to make that commitment, then that provider's ETC designation should be revoked. If there are no ETCs willing and able to provide broadband capable service to consumers in a particular high-cost area within a reasonable time frame, then the Commission could either target additional support to that area or could determine satellite would be the most suitable service and provide support to a satellite provider serving the area.

Consistent with prior comments, the NPSC does not believe reverse auctions or large scale competitive bidding should be used for recurring high-cost support. The Act defines universal service as an evolving level of telecommunications.[44] The Commission is also required to preserve and advance universal service through its programs in a

[43] Subsequently, the NPSC adopted an urban benchmark of $17.95 and a rural benchmark of $19.95. *See* Application No. NUSF-50, *In the Matter of the Nebraska Public Service Commission, on its own motion, Seeking to Make Adjustments to the Universal Service Fund Mechanism Established in NUSF-26*, Order (December 19, 2006).

[44] 47 U.S.C. § 254(c)(1).

predictable manner.[45] Consistent with these requirements, the Commission should implement a mechanism that provides an incentive to carriers to build broadband capable networks but also to make subsequent improvements to those networks as consumer demands change. We believe the competitive bid process will lock consumers into receiving a certain level of service throughout the bid period with no incentive to improve network quality or service beyond the minimum expectations. There is also a concern that broadband providers would no longer be accountable for meeting state commission public interest obligations because the bidding requirements would supersede state-based consumer protections.

If the Commission does decide to adopt a competitive bidding everywhere approach, then we recommend providing the current COLR for voice services support through a "right of first refusal" to provide both voice and broadband to consumers in the area for a specific amount of ongoing support.[46]

Separations Reform

In addition, we believe it is important for the Commission to address current separations rules. The NPSC previously commented that,

> [C]ost assignment should match revenue assignment. If the interstate revenue does not match the interstate cost, then the resulting mismatch will lead to behavior that could harm both consumers and competitors. Caution must be taken to prevent a situation where there is an incentive to subsidize competitive services due to any cost-revenue mismatch.
>
> The jurisdictional character of DSL and emerging technology create even further problems with the existing separations process, since the revenues generated are attributable to interstate with the costs and investment being assigned to the

[45] 47 U.S.C. § 254(b)(5).

[46] *See* NPRM, at para. 431.

intrastate jurisdiction. This result again points to a need or changes in the freeze factor.[47]

Whenever the separations process either overstates interstate costs or understates intrastate revenues it causes a carrier's in-state financial status to appear worse than it is and creates the appearance that additional cost recovery is required. In Nebraska, this translates into additional NUSF support and additional in-state burdens. The Commission must address separations issues in order to ensure that the current mismatch does not carry through in the reformed USF/ICC mechanism.

Intercarrier Compensation

The Commission seeks comment on a number of proposals to comprehensively reform intercarrier compensation. We agree that the current intercarrier compensation system is based on outdated concepts, creates arbitrage opportunities and fails to recognize technological advances. We also agree with the Commission's four reform objectives which are to (1) modernize the Commission's rules to make broadband available and reduce waste, inefficiency and curb arbitrage; (2) promote fiscal responsibility; (3) require accountability; and (4) transition to market-driven and incentive based policies.

In the immediate future, the Commission must remove the most obvious and harmful market distortions. The Commission should conclude that VoIP traffic is subject to the same ICC obligations as all other traffic. The Commission should act quickly to adopt rules which address phantom traffic and access stimulation. Then, the Commission should consider long-term reform which slowly transitions carriers to a more rational market-based ICC formula taking into consideration a fair federal and state balance.

[47] *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board* CC Docket No. 80-286, Comments of the Nebraska Public Service Commission (August 22, 2006).

The NPSC supports the proposed rule amendments which would apply competitively neutral requirements for all traffic regardless of carrier classification.[48] The Commission should apply intercarrier compensation rules to interconnected VoIP traffic at existing interstate and intrastate access and reciprocal compensation rates. The Commission does not need to reach the classification issue to determine that VoIP providers should be included in the ICC framework and fairly compensate other providers for the benefit of the network. In addition, the Commission should not establish a distinction between fixed and nomadic VoIP providers. Creating such a distinction in the rules would only provide an incentive for carriers to either hide the true nature of the traffic or choose an alternative platform on which to send traffic to other carriers' networks.

The NPSC supports the adoption of the proposed amendments to part 64 of its rules pertaining to call signaling as described in Appendix B to the NPRM. The NPSC agrees with other commenters that additional call signaling rules should be considered.[49] The Commission should make clear that intermediary carriers cannot alter or remove any identifying information needed by the terminating carrier for billing purposes.

We agree that the Commission must adopt proposed amendments which would make access stimulation schemes illegal. While a rule should exist to prohibit gaming through access stimulation, the NPSC does not believe that the Commission should prohibit all revenue sharing arrangements or that forbidding revenue sharing arrangements will resolve all incentives to engage in traffic pumping activity. Rather, the NPSC believes the Commission should use a trigger on revenue sharing agreements combined with a factual inquiry to determine whether traffic pumping has occurred and

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[48] *See* NPRM Appendix B.

[49] *See, e.g.*., Section XV Comments of the Nebraska Rural Independent Companies at 21 (April 1, 2011) proposing to require Carrier Identification Code (CIC) or Operating Company Number (OCN) to identify the carrier and requiring carriers to populate the Jurisdictional Indicator Parameter (JIP); Comments of the Washington Utilities and Transportation Commission (April 1, 2011) also recommending that the Commission require carriers to provide the OCN or CIC identifiers or other sufficient information for protocol traffic. *See also* Comments of the Public Service Commission of the State of Missouri (April 1, 2011).

whether violators should be penalized. The Commission should look at access patterns and determine whether because of a significant increase, carriers are engaging in unlawful traffic pumping activities.

To achieve the long term goals of the Broadband Plan and while the Commission transitions to a broadband environment, we agree the Commission should design an integrated intercarrier compensation plan which sets carriers on a glidepath to a cost-based regime. The Commission should ensure that existing services are still priced at affordable rates to consumers. The Commission should also recognize that some areas served by rural carriers are more expensive to serve and have higher costs than other areas.

The Commission must preserve states' authority to determine and set intrastate access rates. State commissions are familiar with carriers' overall cost structures and investments, can quickly anticipate and resolve cost adjustment needs and are in the best position to determine whether access rates are close to cost. Rather than preempting state authority, the NPSC recommends providing incentives to reduce intrastate access charges and incentives to bring them in line with where the Commission believes they ought to be.

We oppose a mandatory bill and keep regime for all traffic.[50] Section 252(d)(2)(B)(i) of the Act, appropriately allows for bill and keep arrangements where a mutual agreement occurs. However, the Act does not direct the Commission to require or even endorse bill and keep arrangements. It is clear that in some instances, carriers may prefer to negotiate and implement bill and keep arrangements; however, a one-size fits all mechanism for intercarrier compensation is not appropriate. In a number of cases, a bill and keep regime would not fairly compensate providers. In the alternative, the NPSC supports intercarrier compensation reform which would fairly recognize a market-based rate for the service provided and would consider the volume and distance of the traffic carried by the provider.

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[50] *See* NPRM, at para. 530.

If the Commission is determined to set a formula which directly or indirectly determines intrastate access rates, then the Commission must address the issue of separations first, so that it can appropriately balance what costs should be attributable to the interstate jurisdiction and which costs should be attributable to intrastate recovery mechanisms. These decisions must precipitate the transition to a uniform ICC mechanism.

III. CONCLUSION

We appreciate the extensive work that the Commission has already begun to modernize its USF/ICC rules. The Commission must, however, cautiously consider the impact of its reform proposals on the carriers currently receiving support and serving rural consumers. The Commission must also ensure that consumers are adequately protected by not displacing current carrier of last resort obligations.

We agree with the Commission that universal service policy should promote and support broadband capable networks and services. To that end, we support a number of the Commission's proposals and are looking forward to a continuing discussion regarding the most appropriate way to extend the benefits of broadband to consumers everywhere.

Respectfully Submitted,

Nebraska Public Service Commission

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